

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| In re Application of: | Wolfgang ADERHOLD | Attorneys Docket: | AM-8304 |
| Serial No.: | 10/788,979 | Confirmation No.: | 6862 |
| Filed: | February 27, 2004 | Art Unit No.: | 3742 |
| Examiner: | S. Y. Paik | | |
| For: | “BACKSIDE RAPID THERMAL PROCESSING OF PATTERNED WAFERS” | | |

Commissioner for Patents
ATTN: Director Technology Center 3700
Alexandria, VA 22313-1450

PETITION UNDER 37 CFR 1.198

Sir/Madam:

The Technology Center Director is requested to rescind the reopening of prosecution in the above application noted in the Office Action of April 1, 2011.

The present application was appealed to the Board of Appeals and Patent Interferences. By its decision dated June 28, 2010 and its erratum dated August 17, 2010, the Board affirmed the rejections of some claims but reversed the rejection of claims 1-5, 7-9, 13-15, and 30-32. Applicant by Rule 116 amendment filed December 20, 2010 canceled the rejected claims and put non-rejected claims depending from rejected claims in independent form.

In the Office Action of April 1, 2011, the examiner reopened prosecution and rejected claims 1-5, 7-90, 13-15, and 30-32 under 35 U.S.C. §103(a) as obvious over Moslehi (US 4,891,499, hereafter Moslehi ‘499), in view of Ballance et al. (US 6,090,210, hereafter Ballance)

or Anderson et al. (US 6,113,703, hereafter Anderson).

The Board found these claims to be allowable despite a rejection over Ballance or Anderson in view of Moslehi '499 or Moslehi (US patent 4,956,538, hereafter Moslehi '538). The examiner now relies upon the first three of these references but omits the fourth. As a result, the Board has considered the three references upon which the examiner now relies and nonetheless the Board found patentable subject matter. As the Board states on page 2 of the Erratum, the "Examiner's obviousness rejection fails to point out where Ballance, Anderson, Moslehi '499, and Moslehi '538 describe each limitation of claims 1-5, 7-9, 30, and 31. ... The Examiner's decision to reject claims 1-5, 7-9, 13-15, and 30-32 is reversed." Only by fine hairsplitting can the examiner now state that he has a new ground of rejection and thus attempt to recast and adjust the arguments previously rejected by the Board.

Under 37 CFR 1.198, prosecution can be reopened "only for the consideration of matters not already adjudicated, sufficient cause being shown." The rejection involving the three references has already been effectively adjudicated by the Board. They have found the present three references to be inadequate for an obviousness rejection. Further, there is nothing of record showing sufficient cause why the presented rejection over the three references would be anymore effective than the prior rejection over the same three references plus a fourth or why the present rejection and arguments were not presented to the Board. The reopening of prosecution is a waste of time for all concerned and should be summarily rescinded.

The Technology Center Director is requested to instruct the Examiner to withdraw the Office Action of April 1, 2011 and to instead issue a Notice of Allowance for the claims allowed by the Board.

The Commissioner is authorized to charge Deposit Account 50-0636 for any required fees including petition fees.

Date: 13 June 2011
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Respectfully submitted,

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